

AMENDED IN SENATE JANUARY 17, 2014

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 18, 2013

AMENDED IN SENATE APRIL 8, 2013

## **SENATE BILL**

**No. 388**

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**Introduced by Senator Lieu**

February 20, 2013

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An act to amend Sections 3253 and 3303 of the Government Code, relating to public employment.

### LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Lieu. Public safety officers and firefighters: investigations and interrogations.

The Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act grant certain rights to public safety officers and firefighters, as defined. The acts require that, when any public safety officer or firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department or fire department, that could lead to punitive action, the interrogation be conducted under certain conditions, except as specified.

This bill would provide that if an interrogation focuses on matters that may result in punitive action against a public safety officer or firefighter who is not formally under investigation, but is interviewed regarding the investigation of another public safety officer or firefighter, the public safety officer or firefighter being interviewed is entitled to representation, as specified.

By adding to the duties of local agencies to comply with the Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3253 of the Government Code is amended  
2     to read:  
3     3253. When any firefighter is under investigation and subjected  
4     to interrogation by his or her commanding officer, or any other  
5     member designated by the employing department or licensing or  
6     certifying agency, that could lead to punitive action, the  
7     interrogation shall be conducted under the following conditions:  
8     (a) The interrogation shall be conducted at a reasonable hour,  
9     at a time when the firefighter is on duty, unless an imminent threat  
10    to the safety of the public requires otherwise. If the interrogation  
11    does occur during off-duty time of the firefighter being  
12    interrogated, the firefighter shall be compensated for any off-duty  
13    time in accordance with regular department procedures. The  
14    firefighter's compensation shall not be reduced as a result of any  
15    work missed while being interrogated.  
16    (b) The firefighter under investigation shall be informed, prior  
17    to the interrogation, of the rank, name, and command of the officer  
18    or other person in charge of the interrogation, the interrogating  
19    officer, and all other persons to be present during the interrogation.  
20    All questions directed to the firefighter under interrogation shall  
21    be asked by and through no more than two interrogators at one  
22    time.  
23    (c) The firefighter under investigation shall be informed of the  
24    nature of the investigation prior to any interrogation.

1 (d) The interrogating session shall be for a reasonable period  
2 taking into consideration the gravity and complexity of the issue  
3 being investigated. The person under interrogation shall be allowed  
4 reasonable breaks to attend to his or her own personal physical  
5 necessities.

6 (e) (1) The firefighter under interrogation shall not be subjected  
7 to offensive language or threatened with punitive action. A promise  
8 of reward shall not be made as an inducement to answering any  
9 question. The employer shall provide to, and obtain from, an  
10 employee a formal grant of immunity from criminal prosecution,  
11 in writing, before the employee may be compelled to respond to  
12 incriminating questions in an interrogation. Subject to that grant  
13 of immunity, a firefighter refusing to respond to questions or  
14 submit to interrogations shall be informed that the failure to answer  
15 questions directly related to the investigation or interrogation may  
16 result in punitive action.

17 (2) The employer shall not cause the firefighter under  
18 interrogation to be subjected to visits by the press or news media  
19 without his or her express written consent free of duress, and the  
20 firefighter's photograph, home address, telephone number, or other  
21 contact information shall not be given to the press or news media  
22 without his or her express written consent.

23 (f) A statement made during interrogation by a firefighter under  
24 duress, coercion, or threat of punitive action shall not be admissible  
25 in any subsequent judicial proceeding, subject to the following  
26 qualifications:

27 (1) This subdivision shall not limit the use of statements  
28 otherwise made by a firefighter when the employing fire  
29 department is seeking civil service sanctions against any firefighter,  
30 including disciplinary action brought under Section 19572.

31 (2) This subdivision shall not prevent the admissibility of  
32 statements otherwise made by the firefighter under interrogation  
33 in any civil action, including administrative actions, brought by  
34 that firefighter, or that firefighter's exclusive representative, arising  
35 out of a disciplinary action.

36 (g) The complete interrogation of a firefighter may be recorded.  
37 If a recording is made of the interrogation, the firefighter shall  
38 have access to the recording if any further proceedings are  
39 contemplated or prior to any further interrogation at a subsequent  
40 time. The firefighter shall be entitled to a transcribed copy of any

1 notes made by a stenographer or to any reports or complaints made  
2 by investigators or other persons, except those portions that are  
3 otherwise required by law to be kept confidential. Notes or reports  
4 that are deemed to be confidential shall not be entered in the  
5 firefighter's personnel file. The firefighter being interrogated shall  
6 have the right to bring his or her own recording device and record  
7 any and all aspects of the interrogation.

8 (h) If, prior to or during the interrogation of a firefighter, it is  
9 contemplated that he or she may be charged with a criminal  
10 offense, he or she shall be immediately informed of his or her  
11 constitutional rights.

12 (i) (1) Upon the filing of a formal written statement of charges,  
13 or whenever an interrogation focuses on matters that may result  
14 in punitive action against any firefighter, that firefighter, at his or  
15 her request, shall have the right to be represented by a  
16 representative of his or her choice who may be present at all times  
17 during the interrogation. The representative shall not be a person  
18 subject to the same investigation. The representative shall not be  
19 required to disclose, or be subject to any punitive action for  
20 refusing to disclose, any information received from the firefighter  
21 under investigation for noncriminal matters.

22 (2) If an interrogation focuses on matters that may result in  
23 punitive action against a firefighter who is not formally under  
24 investigation but is interviewed regarding the investigation of  
25 another firefighter, the firefighter being interviewed shall have the  
26 right to be represented by a representative of his or her choice. *The*  
27 *firefighter may choose a representative who is reasonably available*  
28 *to represent the firefighter at an interrogation that has been*  
29 *reasonably scheduled.* The representative may be present at all  
30 times during the interrogation or interview. The representative  
31 shall not be a person subject to the same investigation. The  
32 representative shall not be required to disclose, or be subject to  
33 punitive action for refusing to disclose, any information received  
34 from the firefighter being interrogated as part of the investigation  
35 for noncriminal matters.

36 (3) This section shall not be construed to apply to counseling,  
37 instruction, or informal verbal admonishment by, or other routine  
38 or unplanned contact with, a supervisor or any other firefighter.

39 (j) A firefighter shall not be loaned or temporarily reassigned  
40 to a location or duty assignment if a firefighter in his or her

1 department would not normally be sent to that location or would  
2 not normally be given that duty assignment under similar  
3 circumstances.

4 SEC. 2. Section 3303 of the Government Code is amended to  
5 read:

6 3303. When any public safety officer is under investigation  
7 and subjected to interrogation by his or her commanding officer,  
8 or any other member of the employing public safety department,  
9 that could lead to punitive action, the interrogation shall be  
10 conducted under the following conditions. For the purpose of this  
11 chapter, punitive action means any action that may lead to  
12 dismissal, demotion, suspension, reduction in salary, written  
13 reprimand, or transfer for purposes of punishment.

14 (a) The interrogation shall be conducted at a reasonable hour,  
15 preferably at a time when the public safety officer is on duty, or  
16 during the normal waking hours for the public safety officer, unless  
17 the seriousness of the investigation requires otherwise. If the  
18 interrogation does occur during off-duty time of the public safety  
19 officer being interrogated, the public safety officer shall be  
20 compensated for any off-duty time in accordance with regular  
21 department procedures, and the public safety officer shall not be  
22 released from employment for any work missed.

23 (b) The public safety officer under investigation shall be  
24 informed prior to the interrogation of the rank, name, and command  
25 of the officer in charge of the interrogation, the interrogating  
26 officers, and all other persons to be present during the interrogation.  
27 All questions directed to the public safety officer under  
28 interrogation shall be asked by and through no more than two  
29 interrogators at one time.

30 (c) The public safety officer under investigation shall be  
31 informed of the nature of the investigation prior to any  
32 interrogation.

33 (d) The interrogating session shall be for a reasonable period  
34 taking into consideration gravity and complexity of the issue being  
35 investigated. The person under interrogation shall be allowed to  
36 attend to his or her own personal physical necessities.

37 (e) The public safety officer under interrogation shall not be  
38 subjected to offensive language or threatened with punitive action,  
39 except that an officer refusing to respond to questions or submit  
40 to interrogations shall be informed that failure to answer questions

1 directly related to the investigation or interrogation may result in  
2 punitive action. No promise of reward shall be made as an  
3 inducement to answering any question. The employer shall not  
4 cause the public safety officer under interrogation to be subjected  
5 to visits by the press or news media without his or her express  
6 consent nor shall his or her home address or photograph be given  
7 to the press or news media without his or her express consent.

8 (f) No statement made during interrogation by a public safety  
9 officer under duress, coercion, or threat of punitive action shall be  
10 admissible in any subsequent civil proceeding. This subdivision  
11 is subject to the following qualifications:

12 (1) This subdivision shall not limit the use of statements made  
13 by a public safety officer when the employing public safety  
14 department is seeking civil sanctions against any public safety  
15 officer, including disciplinary action brought under Section 19572.

16 (2) This subdivision shall not prevent the admissibility of  
17 statements made by the public safety officer under interrogation  
18 in any civil action, including administrative actions, brought by  
19 that public safety officer, or that officer's exclusive representative,  
20 arising out of a disciplinary action.

21 (3) This subdivision shall not prevent statements made by a  
22 public safety officer under interrogation from being used to  
23 impeach the testimony of that officer after an in camera review to  
24 determine whether the statements serve to impeach the testimony  
25 of the officer.

26 (4) This subdivision shall not otherwise prevent the admissibility  
27 of statements made by a public safety officer under interrogation  
28 if that officer subsequently is deceased.

29 (g) The complete interrogation of a public safety officer may  
30 be recorded. If a tape recording is made of the interrogation, the  
31 public safety officer shall have access to the tape if any further  
32 proceedings are contemplated or prior to any further interrogation  
33 at a subsequent time. The public safety officer shall be entitled to  
34 a transcribed copy of any notes made by a stenographer or to any  
35 reports or complaints made by investigators or other persons,  
36 except those which are deemed by the investigating agency to be  
37 confidential. No notes or reports that are deemed to be confidential  
38 may be entered in the officer's personnel file. The public safety  
39 officer being interrogated shall have the right to bring his or her

1 own recording device and record any and all aspects of the  
2 interrogation.

3 (h) If prior to or during the interrogation of a public safety  
4 officer it is deemed that he or she may be charged with a criminal  
5 offense, he or she shall be immediately informed of his or her  
6 constitutional rights.

7 (i) (1) Upon the filing of a formal written statement of charges,  
8 or whenever an interrogation focuses on matters that are likely to  
9 result in punitive action against any public safety officer, that  
10 officer, at his or her request, shall have the right to be represented  
11 by a representative of his or her choice who may be present at all  
12 times during the interrogation. The representative shall not be a  
13 person subject to the same investigation. The representative shall  
14 not be required to disclose, nor be subject to any punitive action  
15 for refusing to disclose, any information received from the officer  
16 under investigation for noncriminal matters.

17 (2) If an interrogation focuses on matters that ~~may~~ *are likely to*  
18 result in punitive action against a public safety officer who is not  
19 formally under investigation but is interviewed regarding the  
20 investigation of another public safety officer, the public safety  
21 officer being interviewed shall have the right to be represented by  
22 a representative of his or her choice. *The public safety officer may*  
23 *choose a representative who is reasonably available to represent*  
24 *the officer at an interrogation that has been reasonably scheduled.*  
25 The representative may be present at all times during the  
26 interrogation or interview. The representative shall not be a person  
27 subject to the same investigation. The representative shall not be  
28 required to disclose, or be subject to punitive action for refusing  
29 to disclose, any information received from the public safety officer  
30 being interrogated as part of the investigation for noncriminal  
31 matters.

32 (3) This section shall not apply to any interrogation of a public  
33 safety officer in the normal course of duty, counseling, instruction,  
34 or informal verbal admonishment by, or other routine or unplanned  
35 contact with, a supervisor or any other public safety officer, nor  
36 shall this section apply to an investigation concerned solely and  
37 directly with alleged criminal activities.

38 (j) No public safety officer shall be loaned or temporarily  
39 reassigned to a location or duty assignment if a sworn member of  
40 his or her department would not normally be sent to that location

1 or would not normally be given that duty assignment under similar  
2 circumstances.

3 SEC. 3. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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